

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.06.2015

CORAM:

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
AND
THE HONOURABLE MR.JUSTICE B.RAJENDRAN

H.C.P.No.537/2015

S.Mathinabegum

... Petitioner/Mother
of the detenu

Vs

1. The State of Tamil Nadu,
Secretary to the Government
Home, Prohibition and Excise [XVI] Department,
Fort St. George, Secretariat, Chennai 600 009.
2. The Commissioner of Police,
The Detaining Authority, City Police Office,
Behind Amman Kalyanamandapam, Sirupuluvapatti
Tiruppur Taluk, Tiruppur District.
3. The Sponsoring Authority,
Inspector of Police
Tiruppur South Police Station,
Tiruppur District.

... Respondents

Prayer:- This Habeas Corpus Petition is filed under Article 226 of the Constitution of India to call for the records of the detaining authority, the Commissioner of Police, the 2nd respondent herein, made in Ref.Cr.MP.No.14/G/IS TPR [C]/2014 dated 01.11.2014 detaining the detenu S.Sheik Farith, son of Sirajudeen, 24 years, under T.N.Act 14/1982 as a Goonda at Central Prison, Coimbatore and set aside the same and set the detenu at liberty forthwith.

For Petitioner : Mr.P.Kalimuthu

For Respondents : Mr.M.Maharaja,
Additional Public Prosecutor

ORDER
[Order of the Court was made by S.TAMILVANAN, J]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in Ref.Cr.MP.No.14/G/IS TPR [C]/2014 dated 01.11.2014, whereby the detenu/the son of the petitioner herein, viz., Sheik Farith, son of Sirajudeen, aged 24 years, was ordered to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "Goonda".

2.Though many grounds have been raised in the petition, Mr.P.Kalimuthu, the learned counsel for the petitioner has assailed the impugned detention order only on the ground of non-supply of copy of the bail application in the similar case, referred to in the grounds of detention, for arriving at the subjective satisfaction that there is likelihood of the detenu coming out on bail, which has affected the constitutional right of making an effective and purposeful representation to the authorities concerned, thereby vitiating the detention.

3.Per contra, Mr.M.Maharaja, the learned Additional Public Prosecutor would submit that the impugned detention order has been passed on cogent and sufficient materials and there is no illegality or infirmity in the impugned order of detention. However, he submitted that the copy of the bail application in the similar case, referred to in the grounds of detention were not supplied to the detenu.

4.We have given our careful and anxious consideration to the rival submissions put forward by the learned counsel on either side and thoroughly scanned through the impugned detention order and the entire materials available on record.

5.It is seen from paragraph No.8 of the Grounds of Detention that in similar case, the accused Mani @ Manikandaprabu @ Pulukkaimani was released on bail by the learned Principal Sessions Judge, Madurai, in CrI.MP.No.622/2011 for the offence u/s.397, 506 [ii] IPC in Cr.No.90/2011 on the file of B6 Jaihindpuram Police Station, Madurai City. On a perusal of the Paper Book furnished by the Prosecution, it is seen that it does not contain the document, viz., the bail application, in respect of the similar case ; but the bail order of the said similar case [both in English version and in vernacular version] has been furnished in page Nos.118 and 120 of the Booklet. The said bail application filed in similar case was the document relied upon by the Detaining Authority to come to a subjective satisfaction that the detenu was likely to be released

on bail. Admittedly, such document has not been supplied to the detenu, as it did not form part of the Paper Book furnished by the Prosecution. Therefore, non supply of the copy of the bail order and other documents in similar case to the detenu would vitiate the impugned detention order.

6.The Honourable Supreme Court in M.Ahamed Kutty Vs. Union of India and another (1990-2-SCC-1) has observed thus:-

"7. Considering the facts in the instant case, the bail application and the bail order were vital materials for consideration. If those were not considered the satisfaction of the detaining authority itself would have been impaired and if those had been considered, they would be documents relied on by the detaining authority though not specifically mentioned in the annexure to the order of detention and those ought to have formed part of the documents supplied to the detenu with the grounds of detention and without them the grounds themselves could not be said to have been complete. We have, therefore, no alternative but to hold that it amounted to denial of the detenu's right to make an effective representation and that it resulted in violation of Article 22(5) of the Constitution of India rendering the continued detention of the detenu illegal and entitling the detenu to be set at liberty in this case." (Emphasis added)."

7.This Court in Jarinabegam Vs. State of Tamil Nadu by Secretary to Government, Prohibition and Exercise Department, Chennai and another (2007-1-MLJ-Crl-18) relying upon the decision of the Honourable Supreme Court cited supra has held that non supply of the copy of the bail application/bail order copy in similar case to the detenu has the effect of vitiating the order or detention.

8. As already analysed by us, in the facts and circumstances of the present case, non-supply of the document, viz., bail order etc., in similar case, to the detenu has the effect of vitiating the impugned detention order. Further, due to non-supply of such a vital document, the detenu has lost valuable right to make an effective representation to the authorities concerned.

9. In the light of the above said principles laid down by the Honourable Supreme Court and for the reasons stated above, the impugned order of detention is vitiated and the same is liable to be quashed.

10. In the result, this Habeas Corpus Petition is allowed. The impugned detention order is set aside. The detenu is directed to be released forthwith, unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Secretary to the Government
State of Tamil Nadu, Home, Prohibition
and Excise [XVI] Department, Fort
St. George, Secretariat, Chennai 600 009.
2. The Commissioner of Police, The Detaining
Authority, City Police Office, Behind
Amman Kalyanamandapam, Sirupuluvapatti
Tiruppur Taluk, Tiruppur District.
3. The Inspector of Police
Sponsoring Authority, Tiruppur South
Police Station, Tiruppur District.
4. THE PUBLIC PROSECUTOR,
HIGH COURT, CHENNAI.
5. The Superintendent of Central Prison,
Coimbatore.
6. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

+1cc to Mr.P.Kalimuthu, Advocate, S.R.No.32435

HCP.No.537/2015

BR(CO)
CA(15/07/2015)